

**BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP**

TELEPHONE: (310) 207-3800

INTELLECTUAL PROPERTY LAW  
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LOS ANGELES, CA 90025

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Deliver to: Mail Stop Appeal Brief-Patents, USPTO Art Group: 3714  
 Facsimile No.: (571) 273-8300 Date: November 29, 2005  
 From: Thomas M. Coester, Reg. No. 39,637  
 Our Docket No.: 6378P002 Number of pages 32 including this sheet.  
 Application No.: 10/705,186 Filing Date: 11/10/2003  
 Docket Due Date(s): 12/3/2005

Enclosed are the following documents:

- |   |   |
|---|---|
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| <input type="checkbox"/> Appeal Brief ( ____ pgs)   | <input type="checkbox"/> Notice of Appeal   |
| <input type="checkbox"/> Application: _____   | <input type="checkbox"/> Petition for: _____                                      |
| ( ____ pgs) w/cover & abstract  | <input type="checkbox"/> Request for Continued Examination (RCE)                  |
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| <input checked="" type="checkbox"/> Fee Transmittal (in duplicate)  | <input type="checkbox"/> Transmittal of Publication Fee Due                       |
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|   |    |                        |                        |
|---|----|------------------------|------------------------|
| <b>TRANSMITTAL FORM</b><br>(to be used for all correspondence after initial filing) |    | Application No.        | 10/705,186             |
|   |    | Filing Date            | November 10, 2003      |
|   |    | First Named Inventor   | Michael J.G. Gleissner |
|   |    | Art Unit               | 3714                   |
|   |    | Examiner Name          | John Solomayor         |
| Total Number of Pages in This Submission  | 32 | Attorney Docket Number | 6378P002               |

| ENCLOSURES (check all that apply)   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form<br><input type="checkbox"/> Fee Attached<br><input checked="" type="checkbox"/> Amendment / Response<br><input type="checkbox"/> After Final<br><input type="checkbox"/> Affidavits/declaration(s)<br><input type="checkbox"/> Extension of Time Request<br><input type="checkbox"/> Express Abandonment Request<br><input type="checkbox"/> Information Disclosure Statement<br><input type="checkbox"/> PTO/SB/08<br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><input type="checkbox"/> Response to Missing Parts/Incomplete Application<br><input type="checkbox"/> Basic Filing Fee<br><input type="checkbox"/> Declaration/POA<br><input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><input type="checkbox"/> Licensing-related Papers<br><input type="checkbox"/> Petition<br><input type="checkbox"/> Petition to Convert a Provisional Application<br><input type="checkbox"/> Power of Attorney, Revocation, Change of Correspondence Address<br><input type="checkbox"/> Terminal Disclaimer<br><input type="checkbox"/> Request for Refund<br><input type="checkbox"/> CD, Number of CD(s) | <input type="checkbox"/> After Allowance Communication to Group<br><input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences<br><input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)<br><input type="checkbox"/> Proprietary Information<br><input type="checkbox"/> Status Letter<br><input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):<br><div style="border: 1px solid black; padding: 5px; margin-top: 5px;">         -Facsimile Cover Sheet (1 pg)<br/>         -Amended Replacement Appeal Brief (26 pgs)       </div> |
| Remarks   |  |   |

| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT |  |
|--|--|
| Firm or Individual name                    | Thomas M. Coester, Reg. No. 39,637<br>BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP |
| Signature                                  | <i>Thomas Coester</i>  |
| Date                                       | November 29, 2005  |

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|  |  |                          |                        |
|--|--|--------------------------|------------------------|
| <b>FEE TRANSMITTAL<br/>for FY 2005</b><br><small>Patent fees are subject to annual revision.</small> |  | <i>Complete if Known</i> |                        |
|  |  | Application Number       | 107705,186             |
| <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27.                      |  | Filing Date              | November 10, 2003      |
|  |  | First Named Inventor     | Michael J.G. Gleissner |
| <b>TOTAL AMOUNT OF PAYMENT</b> (\$)  |  | Examiner Name            | John Sotomayor         |
|  |  | Art Unit                 | 3714                   |
|  |  | Attorney Docket No.      | 6378P002               |

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| <input checked="" type="checkbox"/> Deposit Account Deposit Account Number: <u>02-2666</u> Deposit Account Name: <u>Blakely, Sokoloff, Taylor &amp; Zafman LLP</u>                             |  |
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| <input checked="" type="checkbox"/> Charge any additional fee(s) or underpayment of fee(s) under 37 CFR §§ 1.16, 1.17, 1.18 and 1.20. <input type="checkbox"/> Credit any overpayments         |  |

| FEE CALCULATION           |          |              |          |  |             |
|---------------------------|----------|--------------|----------|--|-------------|
| Large Entity              |          | Small Entity |          | Fee Description  | Fee Paid    |
| Fee Code                  | Fee (\$) | Fee Code     | Fee (\$) |  |             |
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| 1052                      | 50       | 2052         | 25       | Surcharge - late provisional filing fee or cover sheet.          |             |
| 2053                      | 130      | 2053         | 130      | Non-English specification  |             |
| 1251                      | 120      | 2251         | 60       | Extension for reply within first month                           |             |
| 1252                      | 450      | 2252         | 225      | Extension for reply within second month                          |             |
| 1253                      | 1,020    | 2253         | 510      | Extension for reply within third month                           |             |
| 1254                      | 1,590    | 2254         | 795      | Extension for reply within fourth month                          |             |
| 1255                      | 2,160    | 2255         | 1,080    | Extension for reply within fifth month                           |             |
| 1401                      | 500      | 2401         | 250      | Notice of Appeal   |             |
| 1402                      | 500      | 2402         | 250      | Filing a brief in support of an appeal                           |             |
| 1403                      | 1,000    | 2403         | 500      | Request for oral hearing   |             |
| 1451                      | 1,610    | 2451         | 1,610    | Petition to institute a public use proceeding                    |             |
| 1460                      | 130      | 2460         | 130      | Petitions to the Commissioner                                    |             |
| 1807                      | 50       | 1807         | 50       | Processing fee under 37 CFR 1.17(q)                              |             |
| 1808                      | 180      | 1808         | 180      | Submission of Information Disclosure Stmt                        |             |
| 1809                      | 790      | 1809         | 395      | Filing a submission after final rejection (37 CFR § 1.129(a))    |             |
| 1810                      | 790      | 2810         | 395      | For each additional invention to be examined (37 CFR § 1.129(b)) |             |
| Other fee (specify) _____ |          |              |          |  |             |
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| <b>SUBMITTED BY</b> |                       | <i>Complete (if applicable)</i>   |                |
| Name (Print/Type)   | Thomas M. Coester     | Registration No. (Attorney/Agent) | 39,637         |
| Signature           | <i>Thomas Coester</i> | Telephone                         | (310) 207-3800 |
|                     |                       | Date                              | 11/29/05       |

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**FEE TRANSMITTAL  
for FY 2005**

Patent fees are subject to Annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT (\$)

## Complete If Known

|                      |                        |
|----------------------|------------------------|
| Application Number   | 10/705,186             |
| Filing Date          | November 10, 2003      |
| First Named Inventor | Michael J.G. Gleissner |
| Examiner Name        | John Sotomayor         |
| Art Unit             | 3714                   |
| Attorney Docket No.  | 6378P002               |

## METHOD OF PAYMENT (check all that apply)

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☒ Charge any additional fee(s) or underpayment of fee(s) under 37 CFR §§ 1.16, 1.17, 1.18 and 1.20. ☐ Credit any overpayments

## FEE CALCULATION

| Large Entity              |          | Small Entity |          | Fee Description  | Fee Paid |
|---------------------------|----------|--------------|----------|--|----------|
| Fee Code                  | Fee (\$) | Fee Code     | Fee (\$) |  |          |
| 1051                      | 130      | 2051         | 65       | Surcharge - late filing fee or oath                              |          |
| 1052                      | 50       | 2052         | 25       | Surcharge - late provisional filing fee or cover sheet.          |          |
| 2053                      | 130      | 2053         | 130      | Non-English specification  |          |
| 1251                      | 120      | 2251         | 60       | Extension for reply within first month                           |          |
| 1252                      | 450      | 2252         | 225      | Extension for reply within second month                          |          |
| 1253                      | 1,020    | 2253         | 510      | Extension for reply within third month                           |          |
| 1254                      | 1,590    | 2254         | 795      | Extension for reply within fourth month                          |          |
| 1255                      | 2,160    | 2255         | 1,080    | Extension for reply within fifth month                           |          |
| 1401                      | 500      | 2401         | 250      | Notice of Appeal   |          |
| 1402                      | 500      | 2402         | 250      | Filing a brief in support of an appeal                           |          |
| 1403                      | 1,000    | 2403         | 500      | Request for oral hearing   |          |
| 1451                      | 1,510    | 2451         | 1,510    | Petition to institute a public use proceeding                    |          |
| 1460                      | 130      | 2460         | 130      | Petitions to the Commissioner                                    |          |
| 1807                      | 50       | 1807         | 50       | Processing fee under 37 CFR 1.17(q)                              |          |
| 1806                      | 180      | 1806         | 180      | Submission of Information Disclosure Stmt                        |          |
| 1809                      | 790      | 1809         | 395      | Filing a submission after final rejection (37 CFR § 1.129(a))    |          |
| 1810                      | 790      | 2810         | 395      | For each additional invention to be examined (37 CFR § 1.129(b)) |          |
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## SUBMITTED BY

## Complete (if applicable)

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|-------------------|-----------------------|--------------------------------------|----------|-----------|----------------|
| Name (Print/Type) | Thomas M. Coester     | Registration No.<br>(Attorney/Agent) | 39,637   | Telephone | (310) 207-3800 |
| Signature         | <i>Thomas Coester</i> | Date                                 | 11/29/05 |           |                |

Based on PTO/SB/17 (12-04) as modified by Blakely, Sokoloff, Taylor & Zafman (w/12/15/2004).  
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Attorney's Docket No.: 006378.P002

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

Michael J. G. Gleissner, et al.

Application No.: 10/705,186

Filing Date: November 10, 2003

For: SYSTEM FOR LEARNING LANGUAGE  
THROUGH EMBEDDED CONTENT  
ON A SINGLE MEDIUM

Examiner: John Sotomayor

Art Unit: 3714

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

In response to the Notice of Non-Compliant Appeal Brief mailed November 3, 2005, Applicant resubmits a replacement Appeal Brief. Applicant notes that the requested heading is specifically not required under the new rules as currently in force. Specifically, 37 CFR 41.37(c) does not require a heading regarding grouping of the claims. Accordingly, it is respectfully submitted that the Appeal Brief was compliant as

originally filed. However, Applicant has deleted the section previously headed,  
"Conclusion and Relief."

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date November 29, 2005

By: Thomas M. Coester  
Thomas M. Coester  
Reg. No. 39,637

12400 Wilshire Blvd., 7th Floor  
Los Angeles, CA 90025  
(310) 207-3800

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Susan M. Barrette 11/29/2005  
Susan M. Barrette Date: November 29, 2005

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**NOV 29 2005**

Docket No.: 006378P002

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Michael J. G. Gleissner, et al.

Application No.: 10/405,186

Filed: November 10, 2003

For: **SYSTEM FOR LEARNING LANGUAGE  
THROUGH EMBEDDED CONTENT ON  
A SINGLE MEDIUM**

Art Group: 3714

Examiner: John Sotomayor

**AMENDED REPLACEMENT APPEAL BRIEF**

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Madam:

In response to the Notification of Non-Compliant Appeal Brief mailed November 3, 2005, Applicants submit the following Amended Appeal Brief pursuant to 37 C.F.R. §41.37 for consideration by the Board of Patent Appeals and Interferences. Please charge any additional amount due or credit any overpayment to the Deposit Account 02-2666.

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**I. REAL PARTY IN INTEREST**

Michael J. G. Gleissner, et al., the party named in the caption, transferred his rights in that which is disclosed in the subject application through an assignment recorded on December 4, 2003 to Bigfoot Productions, Inc. Bigfoot Productions, Inc. assigned its rights in the subject application on May 9, 2004 to Movielearn Systems Ltd., Pte., a Singaporean corporation. Accordingly, Movielearn Systems Ltd., Pte. is the real party in interest.

**II. RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this Appeal.

**III. STATUS OF CLAIMS**

Claims 51-68 and 89 are pending in the application, all of which have been rejected. Appellants appeal the rejection of claims 51-68 and 89.

**IV. STATUS OF AMENDMENTS**

No amendment has been submitted after the Final Office Action mailed March 22, 2005.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

The embodiments of the invention disclose a method and a system for using pre-existing entertainment media such as feature films on DVD or music or CD in connection with additional language-learning content stored in a companion file (Abstract). The system provides enhanced features including language learning, content controls, and an inference engine to adapt the additional content to the needs of a user (Page 3, lines 1-8). Independent claims 51 and 89 and dependent claims (52-68) are presented in this appeal.

Independent claims 51 and 89 recite presenting an original content including at least one of video or audio content originally produced primarily for purposes other than language learning (Abstract); providing assistance to a user to facilitate language learning (Page 3, lines 1-8 and Page 7, lines 22-28); observing an activity of the user (Fig. 8, block 805 and Page 24, lines 13-22); inferring the extent of knowledge of a language of the user (Fig. 8, block 807 and Page 24, lines 22-23); and automatically adjusting the form of assistance to the user (Fig. 8, block 809 and Page 25, lines 1-19).

With respect to claims 52, 54, and 63, these claims incorporate the limitations of claim 51. Claims 52 further includes delivering the original content with an additional content via a same digital medium (Page 3, lines 14-17); wherein the additional content includes a text database of the words present within the original content; and wherein the additional content further includes information about the words (reference number 203 of Fig. 2A and Page 10, lines 16-19). Claims 54 further includes playing the original content associated with a plurality of sequentially adjacent words wherein the length and starting point of the sequence of words is responsive to a user input (Page 9, lines 5-15 and Page 10, lines 28-31). Claim 63 further includes providing additional content that includes an index of words spoken in the original content (reference number 203 of Fig. 5 and Page 19, lines 17-23); providing a library of audible pronunciations for a plurality of the words in the index (Page 20, line 7); and playing the pronunciations in response to a user input (Page 19, line 9).

Claim 53 incorporates the limitations of claim 51 and further includes combining an additional content from a separate digital medium with the original content (server 135 of Fig. 1 and Page 3, lines 14-17); wherein the additional content includes a text database of the words present within the original content; and wherein the additional content further includes information about the words (Page 10, lines 16-19).

Claim 59 incorporates the limitations of claim 51 and further includes automatically pausing the content during playback at a point and for a duration based on the extent of the knowledge (Page 25, lines 1-10).

Claim 60 incorporates the limitations of Claim 59 and further includes automatically offering an additional content during a pause based on the extent of the knowledge (Page 25, line 4).

Claim 61 incorporates the limitations of claim 51 and further includes prompting the user to indicate if they desire more or less assistance (Page 24, line 20).

Claim 64 incorporates the limitations of claim 51 and further includes analyzing at least one of a user input, a context of the user input, a database of the original content, a database of an additional content, and a database of user information to identify information of interest in relation to a segment of the original content; presenting the information of interest prior to playing the segment (Page 14, line 29- Page 15, line 22).

Claim 65 incorporates the limitations of claim 51 and further includes analyzing at least one of a user input, a context of the user input, a database of the original content, a database of an additional content, and a database of user information to identify information of interest in relation to a segment of the original content; and prompting the user for an additional input, the additional input to cause a further modification of the playback (Page 16, lines 7-9 and Page 25, lines 13-19).

Claim 66 incorporates the limitations of claim 51 and further includes providing a link to other content accessible across a distributed network (Page 3, lines 1-4 and lines 15-17).

Claim 55 incorporates the limitations of claim 51 and further includes playing a plurality of sequentially adjacent words wherein a speed of playback is adjusted responsive to a user input (Fig. 3, block 317 and Page 9, lines 5-18). Claims 56 and 57 incorporate the limitations of claim 55. Claim 56 further includes adjusting a pitch of audible playback in relation to the speed of playback to improve intelligibility of an audible word (Fig. 3, block 319 and Page 9, lines 5-18). Claim 57 further includes adjusting a time-spacing between audible words in the playback in relation to the speed of playback to improve recognition of the audible words (Fig. 3, block 321 and Page 9, lines 5-18). Claim 58 incorporates the limitations of claim 57 and further includes

wherein the individual audible words between the time spaces have their original natural pitch and speech rate preserved (Page 9, lines 5-18).

Claim 62 incorporates the limitations of claim 51 and further includes providing additional content that includes an index of words spoken in a soundtrack of the original content (Page 7, lines 21-22); adjusting the speed of playback of the original content responsive to a user input; adjusting at least one of pitch and time-spacing of the words to improve at least one of intelligibility and recognition (Page 9, lines 5-18); and maintaining a correlation of words spoken to specific points in the content by reference to the index (Fig. 4, block 421, Page 18, lines 1-3, and Page 19, lines 17-23).

Claim 67 incorporates the limitations of claim 51 and further includes controlling access to at least one of content and functions based upon rights granted to the user. Claim 68 incorporates the limitations of claim 67 and further includes wherein rights are granted based on payments received (Page 5, lines 9-14).

#### **VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The issues involved in this Appeal are as follows:

- A. Are claims 51-54, 59-61, 63-66 and 89 unpatentable under 35 U.S.C. §102(a) for being anticipated by U.S. Patent No. 6,632,094 issued to Falcon et al ("Falcon")?
- B. Is claim 55 unpatentable under 35 U.S.C. §103(a) for being obvious over Falcon in view of U.S. Patent No. 5,882,202 issued to Sameth et al ("Sameth")?
- C. Are claims 67 and 68 unpatentable under 35 U.S.C. §103(a) for being obvious over Falcon in view of U.S. Patent No. 6,302,695 issued to Rtischev et al ("Rtischev")?
- D. Are claims 56-58 and 62 unpatentable under 35 U.S.C. §103(a) for being obvious over Falcon in view of Sameth and in view of U.S. Patent No. 5,794,203 issued to Kehoe ("Kehoe")?

## VII. ARGUMENT

The Examiner has rejected claims 51-54, 59-61, 63-66 and 89 as unpatentable under 35 U.S.C. §102(a) over Falcon.

The Examiner has rejected claim 55 as obvious under 35 U.S.C. §103(a) over Falcon in view of Sameth.

The Examiner has rejected claims 67 and 68 as obvious under 35 U.S.C. §103(a) over Falcon in view of Rtschev.

The Examiner has rejected claims 67 and 68 as obvious under 35 U.S.C. §103(a) over Falcon in view of Sameth and in view of Kehoe.

All of the claims do not stand or fall together. The basis for the separate patentability of the claims is set forth below.

### A. Overview of the Prior Art

#### 1. Overview of Falcon

Falcon teaches a method for simulating story reading by a human mentor to a child. Col. 3, lines 38-42. The method includes displaying a printed text with an image on a monitor to tell a story. Col. 5, lines 16-19. When a child actuates a first feature by clicking a button on the monitor, each successive word of the printed text is visually highlighted in synchronization with natural-voice narration of the text. A second feature allows the child to select individual words within the text to hear the pronunciation of the words. A third feature, actuated after the completion of the second feature, provides a contextual explanation of the selected word. Col. 5, lines 41-57. The contextual explanation tells the child only what he needs to know to understand

the meaning of the word in the context of the sentence and story. Thus, the feature closely resembles a human mentor reading with a child. Col. 9, lines 29-39.

Falcon does not teach a system capable of observing activities of a user, inferring the extent of knowledge of a language of the user, or automatically adjusting the form of assistance to the user. Moreover, the audio narration taught by Falcon is produced solely for the purpose of language learning.

## **2. Overview of Sameth**

Sameth discloses a foreign language instruction program that displays selected frames of a story and dialogue balloons in a foreign language. Abstract. The program also displays translation of the phrases in the dialogue balloons and plays the speech associated with the phrases. Col. 2, lines 46-47. A control icon may be toggled between normal and slow speech to allow a user to better ascertain the content of the speech. Col. 6, lines 14-22.

Sameth also does not teach a system capable of presenting an original content originally produced for purposes other than language learning, observing activities of a user, inferring the extent of knowledge of a language of the user, or automatically adjusting the form of assistance to the user.

## **3. Overview of Rtischev**

Rtischev teaches a language training system in which geographical diverse groups of learners, conversation partners, and teachers exchange asynchronous spoken message over a network. Col. 2, lines 44-49. The system maintains an account for a learner to store information about the learner. The account may include name, address, language fluency, payment information, and the like. Col. 9, lines 1-7. A copyright notice of Rtischev's disclosure states

that a portion of the patent document contains materials subject to copyright protection. Col. 1, lines 15-21.

Rtischev also does not teach a system capable of presenting an original content originally produced for purposes other than language learning, observing activities of a user, inferring the extent of knowledge of a language of the user, or automatically adjusting the form of assistance to the user. Further, Rtischev does not teach a language training system where rights to contents are reserved to an inventor or originator of the content, or a user accesses content based upon logging into an account that requires a payment for maintenance of such an account.

#### 4. Overview of Kehoe

Kehoe teaches a biofeedback system for speech disorders. The system detects disfluent speech and controls the auditory feedback according to the disfluent speech. An auditory feedback controller may shift the pitch of the user's voice, and automatically vary the user's speaking rate at regular time intervals. Abstract. The system allows the user to hear his own speech over the headphones with a delay of a fraction of a second. Col. 2, lines 19-20.

Kehoe also does not teach a system capable of presenting an original content originally produced for purposes other than language learning, inferring the extent of knowledge of a language of the user, or automatically adjusting the form of assistance to the user.

#### B. Rejection of Claims 51 and 89 Under 35 U.S.C § 102(a) as Anticipated by Falcon

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). With respect to claim 51, Falcon fails to teach a method including at least the



elements of “presenting an original content including at least one of video or audio content originally produced primarily for purposes other than language learning;” “observing an activity of the user,” “inferring the extent of knowledge of a language of the user,” and “automatically adjusting the form of assistance to the user.”

The Examiner asserts that Falcon’s system “mimics the language recognition ability of a human mentor, including inferring from user responses the understanding of language presented by the system.” Advisory Action. For the teaching of inferring, the Examiner relies on Falcon at col. 9, lines 29-39. Appellants respectfully submit that the cited passage teaches no more than that the provided word definitions can be understood by children and are contextually correct. The selection of words for general children at the developmental stage of the word definitions cannot possibly teach the claimed element of inferring which occurs at the presentation time. At the presentation time, there is no inference to be made as there is only one possible choice (the definition selected to be contextually correct). Moreover, any inference, if at all, derived at the developmental stage necessarily generalizes the behavior and mental capacity of average children. Such generalization is patentably distinct from the claimed inference drawn from a particular user who is being assisted and whose activities are being observed. Further, any inference if at all made at the developmental stage is made by people who are so far-removed from and tangential to other elements of the claimed method that the characterization of their inference as part of the claim is tenuous and far-fetched.

Further, Falcon does not teach automatically adjusting the form of assistance to the user. The Examiner asserts that Falcon teaches tracking the playback position of the playback for the user by recording playback position, position timing and ancillary data to

"allow the user to automatically adjust the playback assistance to the user." Final Office Action at page 2 section 3, second paragraph. Falcon at most teaches that a user may select different buttons to obtain different types of assistance. Thus, characterizing the adjustment made by a user as automatic is contrary to its common meaning as an automatic adjustment in the given context would not require a user's physical or direct act. Thus, Appellants submit that the Examiner has failed to show that Falcon's system is capable of automatically adjusting the form of assistance to the user.

Additionally, the Examiner has not shown where in Falcon's disclosure that teaches the element of "observing an activity of a user." Appellants have carefully reviewed the entire disclosure of Falcon but have been unable to identify any passage that supports the Examiner's assertion. Falcon's monitor does not make observation on user activities, but rather passively reacts to the click of buttons by a user. Passively reacting to a click of button does not teach the claimed element of observing.

Finally, Falcon does not teach the element of "an original content including at least one of video or audio content originally produced primarily for purposes other than language learning." Falcon's monitor displays text accompanied by image and narration, both of which are produced solely for the purpose of language learning. The displayed text also cannot constitute the original content, at least for the reason that the text does not contain either video or audio content. Appellants note the Examiner relies on col. 3, lines 52-53 for this element. Appellants respectfully submit that the cited passage merely sets forth that text is displayed on a video screen, and an audio narration of the text is generated from stored audio data. It is difficult to discern how the text displayed on a video screen satisfies the

limitation of an original content including at least one of video or audio content originally produced primarily for purposes other than language learning.

Analogous discussions apply to claim 89. Accordingly, Appellants respectfully submit that claims 51 and 89 are patentable over Falcon and request that the rejection under 35 U.S.C. §102(a) be overturned.

**C. Rejection of Claims 52, 54, and 63 Under 35 U.S.C § 102(a) as Anticipated by Falcon**

Claims 52, 54, and 63 depend from claim 51 and incorporate the limitations thereof. Thus, for at least the reasons discussed above with respect to claim 51, these claims are not anticipated by Falcon. Moreover, with respect to claim 52, Appellants respectfully submit that the Examiner's reliance on col. 9, lines 42-67 for teaching text database of words present within the original content is misplaced. As an initial matter, this section relates to creation of a database of an audio signal of a text narration of a book overlaid on the text. This cannot constitute the original content as claimed, at least for the reason that the book does not include video or audio content. Thus, there is no teaching or suggestion in Falcon of delivering an original content with an additional content, wherein the additional content includes a text database of words present within the original content.

With respect to claims 54 and 63, the Examiner's rejection suffers from the same deficiencies as discussed above in connection with the absence of original content from Falcon. Accordingly, Appellants respectfully submit that claims 52, 54, and 63 are separately patentable over Falcon and request that the rejection under 35 U.S.C. §102(a) be overturned.

**D. Rejection of Claim 53 Under 35 U.S.C § 102(a) as Anticipated by Falcon**

Claim 53 depends from claim 51 and incorporates the limitations thereof. Thus, for at least the reasons discussed above with respect to claim 51, this claim is not anticipated by Falcon. Moreover, with respect to claim 53, there is no disclosure of combining additional content from a separate digital medium with the original content as claimed. In the Final Office Action, the Examiner omits the limitation of "from a separate digital medium." However, such omission is contrary to the law when analyzing a rejection under 35 U.S.C. § 102. Accordingly, Appellants respectfully submit that claim 53 is separately patentable over Falcon and request that the rejection under 35 U.S.C. §102(a) be overturned.

**E. Rejection of Claims 59 Under 35 U.S.C § 102(a) as Anticipated by Falcon**

Claim 59 depends from claim 51 and incorporates the limitations thereof. Thus, for at least the reasons discussed above with respect to claim 51, claim 59 is not anticipated by Falcon. Moreover, with regard to claim 59, Appellants respectfully submit that the notion of automatically pausing, much less the basis for such pause, is completely absent from the citation by the Examiner. The Examiner cites col. 5, lines 37-61. However, this passage merely discusses various soft buttons, which a user may actuate to influence the activity of display. The actuation of the soft buttons cannot constitute automatically pausing the content during the playback as it is not automatic where the user physically and directly causes the result. Further, there is no indication that the point and duration is based on the extent of knowledge of the user (the extent which was inferred in the claim from which claim 59 depends, i.e., claim 51). Thus, claim 59 is independently patentable over Falcon. Accordingly, Appellants respectfully submit that claim 59 is separately patentable over Falcon and request that the rejection under 35 U.S.C. §102(a) be overturned.

**F. Rejection of Claims 60 Under 35 U.S.C § 102(a) as Anticipated by Falcon**

Claim 60 depends from claim 51 and incorporates the limitations thereof. Thus, for at least the reasons discussed above with respect to claim 51, claim 60 is not anticipated by Falcon. Appellants submit that the rejection of claim 60 suffers from similar deficiencies as claim 59. Moreover, the additional element of claim 60 reciting automatically offering an additional content during a pause is also not taught or suggested by Falcon. Accordingly, Appellants respectfully submit that claim 60 is separately patentable over Falcon and request that the rejection under 35 U.S.C. §102(a) be overturned.

**G. Rejection of Claim 61 Under 35 U.S.C § 102(a) as Anticipated by Falcon**

Claim 61 depends from claim 51 and incorporates the limitations thereof. Thus, for at least the reasons discussed above with respect to claim 51, this claim is not anticipated by Falcon. Moreover, with respect to claim 61, the Examiner relies on col. 11, lines 45-62. Appellants submit that the cited passage merely indicates that a child can get as little or as much help as he needs. However, there is no teaching or suggestion that the system actually prompts the user to indicate that they desire more or less assistance. Failure to disclose the prompting element of claim 61 necessitates withdrawal of the rejection. Accordingly, Appellants respectfully submit that claim 61 is separately patentable over Falcon and request that the rejection under 35 U.S.C. §102(a) be overturned.

**H. Rejection of Claims 64 Under 35 U.S.C § 102(a) as Anticipated by Falcon**

Claim 64 depends from claim 51 and incorporates the limitations thereof. Thus, for at least the reasons discussed above with respect to claim 51, claim 64 is not anticipated by Falcon. Moreover, the Examiner relies on col. 10, lines 10-38 in the rejection of claim 64. Appellants respectfully submit that the cited discussion of the creation of the database fails

to teach or suggest the analysis that is claimed, or for that matter, the presenting of the information of interest prior to playing the segment. There simply is no presentation of any information prior to playing the segment in Falcon and the cited passage relates to creation, not playback, and is thus inapposite in rendering this rejection. Accordingly, Appellants respectfully submit that claim 64 is separately patentable over Falcon and request that the rejection under 35 U.S.C. §102(a) be overturned.

**I. Rejection of Claims 65 Under 35 U.S.C § 102(a) as Anticipated by Falcon**

Claim 65 depends from claim 51 and incorporates the limitations thereof. Thus, for at least the reasons discussed above with respect to claim 51, claim 65 is not anticipated by Falcon. Moreover, as with other claims discussed above, the analyzing element and the prompting element recited in claim 65 are absent from the Falcon. Accordingly, Appellants respectfully submit that claim 65 is separately patentable over Falcon and request that the rejection under 35 U.S.C. §102(a) be overturned.

**J. Rejection of Claims 66 Under 35 U.S.C § 102(a) as Anticipated by Falcon**

Claim 66 depends from claim 51 and incorporates the limitations thereof. Thus, for at least the reasons discussed above with respect to claim 51, claim 66 is not anticipated by Falcon. Moreover, Falcon only mentions providing the disclosed product on a website, but does not explicitly teach the link as claimed that provides access to other content. Accordingly, Appellants respectfully submit that claim 66 is separately patentable over Falcon and request that the rejection under 35 U.S.C. §102(a) be overturned.

**K. Rejection of Claim 55 Under 35 U.S.C. § 103(a) as Obvious over Falcon in view of Sameth**

To establish a *prima facie* case for obviousness it must be shown that the cited references teach or suggest each element of the claim. See In Re Reinhart, 189 U.S.P.Q. 143, 147 CCPA, 1976 ("'*prima facie*' case of obviousness is established where the teachings from the prior art itself would appear to have suggested the claimed subject matter").

Claim 55 depends from claim 51 and incorporates the limitations thereof. Thus, for at least the reasons discussed above with respect to claim 51, Falcon does not teach or suggest each of the elements of claim 55. Sameth does not cure the defect of Falcon, for at least the reason that Sameth does not teach or suggest the observing element, the inferring element, or the automatically adjusting element. The Examiner has not identified and Appellants have been unable to discern any portion of Sameth that teach or suggest at least these elements of claim 51 from which claim 55 depends. Sameth's system does not observe the user's activities. At most, Sameth's system displays or plays stored translation and pronunciation in response to user selection of control icons. Sameth's system also does not automatically adjust the form of assistance to the user but rather provides assistance according to the user's request.

Thus, Falcon in view of Sameth does not teach or suggest each of the elements of Claim 55. Accordingly, Appellants respectfully submit that claim 55 is separately patentable over Falcon in view of Sameth and request the rejection under 35 U.S.C. § 103(a) be overturned.

**L. Rejection of Claims 56, 57, 58, and 62 Under 35 U.S.C § 103(a) as Obvious over Falcon in view of Sameth and in view of Kehoe**

Claims 56, 57, 58 and 62 depend from claims 51 and 55 and incorporate the limitations thereof. Thus, at least for the reasons above in regard to claims 51 and 55, Falcon in view of Sameth does not teach or suggest each of the elements of claims 56, 57, 58 and 62.

The Examiner relies on Kehoe to teach the additional elements recited in claims 56, 57, 58 and 62. However, Kehoe does not cure the defect of Falcon and Sameth, at least for the reason that Kehoe also fails to disclose or suggest each of the elements of claim 51 from which claims 56, 57, 58 and 62 depend. The Examiner has not identified and Appellants have been unable to discern any portion of Kehoe that teaches or suggests the elements of claim 51. In particular, Appellants note that the Kehoe's system is directed at improving language disfluency which is a type of speech disorder totally unrelated to the knowledge of a language. At least for that reason, Kehoe does not teach or suggest the notion of inferring the extent of knowledge of a language as claimed. Kehoe's system also does not automatically adjust the form of assistance to the user at least for the reason that built-in feedback circuits of the system pre-determine the form of assistance available to the user.

Further, each of the claims 56, 57, 58 and 62 recites the additional element of playback. Appellants note that the biofeedback taught by Kehoe only delays an ongoing speech by a fraction of a second to allow a user to hear an immediate feedback of his own speech. As there is no recording of the speech, there cannot possibly be any playback. Thus, the concept of playback is entirely absent from Kehoe's disclosure.



Moreover, Appellants respectfully submit that there is no motivation to combine these references. Kehoe is directed to biofeedback system for speech disorders. An attempt to apply Kehoe, which modifies a recording of a user's voice, to modify the prerecorded voice or from a movie soundtrack severely over reads the teachings of Kehoe. Both Falcon and Sameth are directed to a language learning system in which presumably the speakers (those providing the dialogue/narrative content) do not have a disorder. Absent Appellants' identification of the issue that the recognition of the spoken word in the soundtrack may be improved by the time spacing and pitch adjusted as claimed, one would not have been motivated to look for such adjustments. Accordingly, this combination could only have been arrived at by hindsight. Hindsight is inappropriate where neither of the references suggest the desirability of the combination, as is the case here.

Accordingly, Appellants respectfully submit that claims 56, 57, 58 and 62 are separately patentable over Falcon in view of Sameth and in view of Kehoe and request the rejection under 35 U.S.C. §103(a) be overturned.

**M. Rejection of Claim 67 Under 35 U.S.C § 103(a) as Obvious over Falcon in view of Rtischev**

Claim 67 depends from claim 51 and incorporates the limitations thereof. Thus, at least for the reasons above in regard to claim 51, Falcon does not teach or suggest each of the elements of claim 67. Further, Rtischev fails to cure the deficiencies discussed above in connection with the claims from which claim 67 depends.

Moreover, contrary to Examiner's assertion, Rtischev does not teach that the content is subject to access based upon an assignment of rights reserved to an inventor or originator of said content. Final Office Action at page 6, section 5. The Examiner relies on col. 1,

lines 15-21 for this teaching. However, the cited passage is a copyright notice of Rtischev's disclosure stating that a portion of the disclosure is subject to copyright protection. The copyright notice is totally unrelated to the language training system taught by Rtischev, and thus cannot possibly teach or suggest the claimed element of controlling access to at least one of content and functions based upon rights granted to the user recited in claim 67. Accordingly, Appellants respectfully submit that claim 67 is separately patentable over Falcon in view of Rtischev and request the rejection under 35 U.S.C. §103(a) be overturned.

**N. Rejection of Claim 68 Under 35 U.S.C § 103(a) as Obvious over Falcon in view of Rtischev**

Claim 68 depends from claim 51 and incorporates the limitations thereof. Thus, at least for the reasons above in regard to claim 51, Falcon does not teach or suggest each of the elements of claim 68. Again, Rtischev fails to cure the deficiencies discussed above in connection with the claims from which claim 68 depends.

Moreover, contrary to Examiner's assertion, Rtischev does not teach that a user accesses content based upon logging into an account that requires a payment for maintenance of such an account. Final Office Action at page 6, section 5. Appellants have been unable to discern any portion in Rtischev that discloses an account that requires a payment for maintenance of such an account as asserted by the Examiner. At most, Rtischev discloses that a user account may include payment information (Col. 9, lines 5-8). A mere passing reference to payment information does not teach the claimed payment-based rights. Thus, claims 67 and 68 are patentable for these additional reasons. Accordingly, Appellants

respectfully submit that claim 68 is separately patentable over Falcon in view of Rtschev  
and request the rejection under 35 U.S.C. §103(a) be overturned.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Dated: November 29, 2005

Thomas Coester  
Thomas M. Coester  
Reg. No. 39,637

12400 Wilshire Blvd.  
Seventh Floor  
Los Angeles, California 90025  
(310) 207-3800

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Susan M. Barrette 11/29/2005  
Susan M. Barrette Date: November 29, 2005

**VIII. CLAIMS APPENDIX**

The claims involved in this Appeal are as follows:

1-50 (Canceled)

51. (Original) A method comprising:

presenting an original content including at least one of video or audio content originally produced primarily for purposes other than language learning;

providing assistance to a user to facilitate language learning;

observing an activity of the user;

inferring the extent of knowledge of a language of the user; and

automatically adjusting the form of assistance to the user.

52. (Original) The method of Claim 51 further comprising:

delivering the original content with an additional content via a same digital medium;

wherein the additional content includes a text database of the words present within the original content; and

wherein the additional content further includes information about the words.

53. (Original) The method of claim 51 further comprising:

combining an additional content from a separate digital medium with the original content;

wherein the additional content includes a text database of the words present within the

original content; and

wherein the additional content further includes information about the words.

54. (Original) The method of claim 51 further comprising:

playing the original content associated with a plurality of sequentially adjacent words

wherein the length and starting point of the sequence of words is responsive to a user input.

55. (Original) The method of claim 51 further comprising:

playing a plurality of sequentially adjacent words wherein a speed of playback is adjusted

responsive to a user input.

56. (Original) The method of claim 55 further comprising:  
adjusting a pitch of audible playback in relation to the speed of playback to improve intelligibility of an audible word.
57. (Original) The method of claim 55 further comprising:  
adjusting a time-spacing between audible words in the playback in relation to the speed of playback to improve recognition of the audible words.
58. (Original) The method of claim 57 wherein the individual audible words between the time spaces have their original natural pitch and speech rate preserved.
59. (Original) The method of 51 further comprising:  
automatically pausing the content during playback at a point and for a duration based on the extent of the knowledge.
60. (Original) The method of 59, further comprising:  
automatically offering an additional content during a pause based on the extent of the knowledge.
61. (Original) The method of 51, further comprising:  
prompting the user to indicate if they desire more or less assistance.
62. (Original) The method of claim 51, further comprising:  
providing additional content that includes an index of words spoken in a soundtrack of the original content;  
adjusting the speed of playback of the original content responsive to a user input;  
adjusting at least one of pitch and time-spacing of the words to improve at least one of intelligibility and recognition; and  
maintaining a correlation of words spoken to specific points in the content by reference to the index.
63. (Original) The method of claim 51, further comprising:  
providing additional content that includes an index of words spoken in the original content;

providing a library of audible pronunciations for a plurality of the words in the index; and  
playing the pronunciations in response to a user input.

64. (Original) The method of claim 51 further comprising:

analyzing at least one of a user input, a context of the user input, a database of the original content, a database of an additional content, and a database of user information to identify information of interest in relation to a segment of the original content;

presenting the information of interest prior to playing the segment.

65. (Original) The method of claim 51 further comprising:

analyzing at least one of a user input, a context of the user input, a database of the original content, a database of an additional content, and a database of user information to identify information of interest in relation to a segment of the original content; and

prompting the user for an additional input, the additional input to cause a further modification of the playback.

66. (Original) The method of claim 51, further comprising:

providing a link to other content accessible across a distributed network.

67. (Original) The method of claim 51, further comprising:

controlling access to at least one of content and functions based upon rights granted to the user.

68. (Original) The method of claim 67, wherein rights are granted based on payments received.

69-88 (Canceled)

89. (Original) A machine readable medium, having stored therein a set of instructions, which when executed cause a machine to perform a set of operations comprising:

presenting an original content including at least one of video or audio content originally produced primarily for purposes other than language learning;

providing assistance to a user to facilitate language learning;

observing an activity of the user;

inferring the extent of knowledge of a language of the user; and  
automatically adjusting the form of assistance to the user.

90-94 (Canceled).

**IX. EVIDENCE APPENDIX**

No evidence is submitted with this appeal.

**X. RELATED PROCEEDINGS APPENDIX**

No related proceedings exist.